IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

CBI ACQUISITIONS, LLC d/b/a CANEEL BAY RESORT and EHI ACQUISITIONS, LLC Plaintiffs, v. J. BRION MORRISETTE and LAUREN E. MORRISETTE Defendants	)	Civil No. 3:14-cv-49 ACTION TO QUIET TITLE, TRESPASS, DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, and DAMAGES
J. BRION MORRISETTE Counterclaim Plaintiff v. CBI ACQUISITIONS, LLC d/b/a CANEEL BAY RESORT and EHI ACQUISITIONS, LLC Counterclaim Defendants	)	(Superior Court No. ST-13-RPR-3)
J. BRION MORRISETTE Third Party Plaintiff v. THE UNITED STATES OF AMERICA Third Party Defendant	)	
J. BRION MORRISETTE Third Party Plaintiff v. ALVIN NAZARIO Third Party Defendant	)	

SECOND AMENDED COUNTERCLAIM AND THIRD PARTY CLAIM

COMES NOW, Defendant J. Brion Morrisette (“Defendant” or “Morrisette”) through his attorney, Michael L. Sheesley, P.C., and for his Second Amended Counterclaim, pursuant to this

Court's Order dated December 11, 2014, *Fed. R. Civ. P. 15(a), LRCi 15.1,* pursuant to *Fed. R. Civ. P.* 13, and Third Party Claim pursuant to *Fed. R. Civ. P.* 14, made applicable to this Court pursuant to *Super. Ct. R.* 7, states as follows:

THIRD PARTY DEFENDANT

The United States of America owns the land on which Plaintiffs operate a for-profit business commonly known as Caneel Bay Resort. The land owned by the United States of America where Caneel Bay Resort is located is operated, upon information and belief, by The National Park Service ("National Park").

Alvin Nazario is a resident of the United States Virgin Islands and resides on Parcel No. 5, Estate Caneel Bay, St. John, U.S. Virgin Islands. Alvin Nazario at all times referenced in these counterclaims and third party claims was employed by Plaintiffs.

JURISDICTIONAL BASIS TO SUE THE UNITED STATES OF AMERICA

The United States has expressly, by statute, waived its sovereign immunity to suit and may be named as a party defendant in a civil action…to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. *28 U.S.C. 2409a(a)*. The present action involves the United States' title to land, and recorded tile covenants of record.

In the Virgin Islands an estate or interest in land includes every legal, vested, interest (including an easement). *28 V.I.C.1*. Under *5 V.I.C. 1262* an individual may have a court determine a question of validity of deeded rights, this necessarily allows title issues, including easements, to be determined by courts in the Virgin Islands.

Morrisette seeks to quiet the title with respect to the covenants of record that relate to land owned by the United States.

SUMMARY OF LAND OWNERSHIP CONTAINED IN THE FACTUAL BACKGROUND

1. Morrisette owns Parcel No. 6 Estate Caneel Bay, Cruz Bay Quarter, St. John, VI (further subdivided into Parcel 6A and 6B - collectively referred to herein as "Parcel 6" or "the Land"). Parcel 6 was acquired by Morrisette's parents in 1951 from Caneel Bay Plantation, Inc., as a part of a planned subdivision development of a large tract of land, which included, without limitation, Parcels 8, 9, 10, 11, 20, 21, 22 Estate Caneel Bay, Cruz Bay Quarter, St. John, VI (this large tract of land is referred to herein, alternatively, as the "Easement Land" and/or "Caneel Bay Resort"). As an inducement to Morrisette's parents to purchase Parcel 6, the 1951 deed contained affirmative easements and covenants running with the land, entitling the owner of Parcel 6 the right "to access, pass over and utilize the docks, anchorages and beaches then existing or thereafter created" on Caneel Bay Resort. Since 1951, Morrisette and his family, as a benefit of owning Parcel 6, have utilized and enjoyed the easements over Caneel Bay Resort that run with the land.
2. Caneel Bay Resort which includes Parcels 8, 9, 10, 11, 20, 21 and 22 Estate Caneel Bay, Cruz Bay Quarter, St. John, VI, is presently owned by the Third Party Defendant The United States of America and/or the National Park. Caneel Bay Resort is exclusively occupied and operated by Counterclaim Defendant CBI ACQUISITIONS, LLC d/b/a CANEEL BAY RESORT and EHI ACQUISITIONS, LLC ("Plaintiff"). It is this land, along with any other land owned by Caneel Bay Plantation, Inc. in October 1951 that Morrisette has the right to access, pass over and utilize the docks, anchorages and beaches then existing or thereafter created. This land is now commonly referred to as Caneel Bay Resort.

3. Adjacent to Parcel No. 6 is a small piece of land owned by Plaintiff Caneel Bay, Inc. known as Parcel No. 5 Estate Caneel Bay, Cruz Bay Quarter, St. John, VI ("Parcel 5"). Parcel 5 is where employees of Plaintiff, including third party defendant Alvin Nazario, are housed. A portion of Parcel 5 has been acquired by Morrisett from Plaintiff and is referred to as the "Land Acquired".

FACTUAL BACKGROUND

4. By Deed recorded on February 7, 1952, Sarah and Ronald Morrisette, the parents of Defendant Morrisette, and Defendant's predecessor in title, purchased land from Caneel Bay Plantation, Inc. The land deeded was then legally described as: Parcel 265 (but is now legally described as Parcel No 6) Estate Caneel Bay, St. John, Virgin Islands ("Parcel 6" or the "Land").

5. Together with a grant of title to Parcel 6, by Warranty Deed dated October 1, 1951, recorded with the Recorder of Deeds for St. Thomas and St. John on February 7, 1952, in Protocol 4E, Page 38, Sub. No 38 (the "Deed"), the Grantor, Caneel Bay Plantation, Inc. expressly granted to Sarah and Ronald Morrisette, and to "their heirs and assigns forever," among other covenants that Morrisette seeks to enforce by declaratory judgment, the following property rights:

"…..**a right of access in and for all purposes, to pass and repass over and upon all roads which may be now or hereafter laid out and constructed by the Grantor** for the benefit of the premises herein conveyed and for the benefit of other premises adjacent thereto, owned by the Grantor or conveyed to other purchasers by the Grantor.

Together with the right to use such docks, anchorages and beaches as now exist or shall be built by the Grantor for the benefit of the premises herein conveyed and for the benefit of adjoining or any other premises owned by the Grantor or conveyed by the Grantor to other purchasers, subject, however to such rules and regulations regarding the use thereof as may be promulgated by the Grantor…"

The rights of access, rights of use and easement granted and reserved in the foregoing three paragraphs shall run with the land and shall bind and inure to the benefit of the Grantor and the Grantees and their respective heirs, executors, administrators, successors and assigns." (bold added)

See Plaintiffs' Exhibit 3, at page 2.

6. The access and use of roads, docks and beaches expressly provided for in the Deed was an integral part of the consideration for the purchase of the Land, and was specifically bargained for by the Morrisette's from Caneel Bay Plantation, Inc.

7. Defendant Morrisette acquired title to the Land from his mother, his sole surviving parent, by two recorded deeds, in 1984 and 1987.

8. By deed dated December 29, 1977 and recorded January 24, 1978 as Document 158 in Volume 18-0 Page 121 in the Office of the Recorder of Deeds for the District of St. Thomas and St. John, Caneel Bay, Inc. conveyed its interest in the land commonly known as Caneel Bay Resort to Jackson Hole Preserve, Incorporated.

9. By deed dated September 30, 1983 Jackson Hole Preserve, Incorporated conveyed its interest in the land commonly known as Caneel Bay Resort to the United States of America, acting by the Secretary of the Interior through the Director of the National Park Service. Jackson Hole Preserve, Incorporated retained the right to use the property for forty years to operate a resort, which resort is commonly known as Caneel Bay Resort. Jackson Hole Preserve, Incorporated has the right to appoint an operator to operate Caneel Bay Resort. Jackson Hole Preserve, Incorporated has appointed the Plaintiffs to operate Caneel Bay Resort.

10. The land deeded by Jackson Hole Preserve, Incorporated to the United States of America includes:

a. Remainder of Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI, containing 127.7 acres, more or less, as shown on P.W.D. F9-122-T56;

i. But excepting and reserving from Remainder of Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI, Parcel No. "A" Estae Caneel Bay, 8 Cruz Bay Quarter, St. John, VI as delineated on Public Works Drawing No. G3-110-T64, comprising 2,456 square feet more or less, being the premises conveyed by Caneel Bay Plantation, Inc. to Government of the Virgin Islands by Quitclaim Deed dated August 22, 1966.

b. Parcel No. 9 of Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI, containing 6.17 acres, more or less, as shown on P.W.D. D9-125-T56;

c. Parcel No. 10 of Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI, containing 0.584 acres more or less, as shown on P.W.D. F9-119-T56;

d. Parcel No. 11 of Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI, containing 1.594 acres, more or less, as shown on P.W.D. F9-121-T56;

e. Parcel No. 20 of Estate Caneel Bay (formerly Parcel No. 8), No. 8 Cruz Bay Quarter, St. John, USVI, containing 9.3 acres, more or less, as shown on P.W.D. D9-25-T51;

f. Parcel No. 21 of Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI, containing 0.85 acres, more or less, as shown on P.W.D. G9-44-T51;

g. Parcel No. 22 of Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI, containing 1.42 acres, more or less, as shown on P.W.D. G9-45-T51.

11. The title covenants and rights of access as set forth in paragraphs 5 and 6 above continued to run with the land and the United States of America is now bound by those title covenants.

12. The United States of America is the record owner of the land burdened by the title covenants and is therefore a proper and necessary party to this action.

13. In 1989, Defendant applied with the VI Legislature for a zoning change of the Land/Parcel 6 from R-1 to R-3 (Residential-Medium Density). Pursuant to law, the Virgin Islands Coastal Zone Management (CZM) body conducted a public hearing on the Defendant's rezoning application for the Land, on or about August 1, 1989.

14. Representatives of Caneel Bay Plantation, Inc., or its successors in interest, received notice and were present at the August 1, 1989 CZM hearing and spoke in opposition to the zoning change of the Land. Despite the stated opposition by representatives of Caneel Bay Plantation, Inc., the VI Legislature approved the change in zoning of the Land from R-1 to R-3 Residential-Medium Density, by Act No 5453.

15. In the twenty-five (25) years since the rezoning of the Land in 1989, neither Caneel Bay Plantation, Inc, nor anyone on its behalf, appealed or has ever contested the rezoning or the use of the Land in any way whatsoever.

16. As a result of his proper application with the VI Government, and in order to make improvements on the Land, Defendant was granted earth change permit STJ-333-92 in 1992 and building permit 233-93 in 1993. These permits were duly posted on the Land for the public to see, as is required by law.

17. In 1992, shortly after the grant of the earth change permit, Defendant Morrisette commenced construction of a bed and breakfast inn on the Land, by the clearing and

grading of the Land with heavy machinery. At this time, Plaintiff – or Plaintiff's predecessor in interest - erected a fence between the Land and Plaintiff's adjoining land, Parcel 5 Estate Caneel Bay, which fence remains today, as – and where - originally constructed by Plaintiff.

18. Parcel No. 5 Estate Caneel Bay, No. 8 Cruz Bay Quarter, St. John, USVI was retained by Caneel Bay, Inc. which is the current Plaintiffs' predecessor in interest. At no time was Parcel No. 5 deeded to the United States of America. Parcel No. 5 is not part of what is commonly known as "Caneel Bay Resort" and instead houses employees of Caneel Bay. Parcel No. 5 is approximately 43,560 square feet of land.

19. Defendant commenced planting of landscaping of the Land in 1992, right up to the edge of the fence erected by Plaintiffs or Plaintiffs' predecessor in interest, including the construction of a tool and gardening shed. Accordingly, since 1992, and up to and including the present, Defendant has openly, continuously, adversely, exclusively and notoriously exerted sole and singular possession, use and control of all land on the Western side of the fence erected by Plaintiffs or Plaintiffs' predecessor in interest, as though it were a part of the Land owned by Defendant. The area landscaped and exclusively controlled by Defendant includes that long, narrow, triangular area – formerly comprising a portion of Parcel 5 Estate Caneel Bay - between the aforementioned fence and the Eastern boundary of Parcel 6 Estate Caneel Bay (the "Land Acquired").

20. Defendant's landscaping of the Land Acquired includes the planting and maintaining of various shrubs and vegetation, fruit trees, ficus, flamboyant and mango trees, as well as the construction of a tool and gardening shed. These trees and vegetations are now quite

large and are fully mature and fruit-bearing, and this vegetation also creates a visual and audio screen and green belt "buffer" between the Plaintiff's and the Defendant's respective properties (respectively Parcel Nos 5 and 6 Estate Caneel Bay).

21. At all times since the erection of the fence in 1992, and without seeking the permission or consent of Plaintiffs, or any other private person or entity, Defendant has exclusively, continuously, openly, adversely, and notoriously possessed, maintained and used the Land Acquired.

22. Alvin Nazario ("Nazzario") is, upon information and belief, at all times material to Morrisette's Third Party Complaint, the grounds and maintenance supervisor for Plaintiffs and is an adult resident of the U.S. Virgin Islands.

23. Nazario resides, and has resided for approximately eight (8) years, on a residence built on Parcel No. 5 Estate Caneel Bay, the parcel belonging to Plaintiffs and adjacent to the Land.

24. On or about October of 2011, Nazario, acting either individually and/or in the course of his employment by Plaintiffs, and at the direction and control of Plaintiffs, and using Plaintiff's personnel and equipment, caused large trees on Parcel No 13 Estate Caneel Bay to be cut down. Parcel No. 13 Estate Caneel Bay is adjacent to the Land/Parcel 6 and is owned by the National Park Service of the United States of America (the "National Park") and is held for the benefit of the citizens of the United States and the U.S. Virgin Islands. The National Park has investigated this unauthorized tree-cutting by Plaintiffs and is determining what further enforcement action to take against either Plaintiffs and/or Nazario.

25. Plaintiffs' trespass and waste on the land owned by the National Park in order to benefit Plaintiffs, and/or Nazario, personally, was an illegal removal of large trees located on federally owned lands in order to obtain better and more open water views from Plaintiff's residences located on Parcel 5.

26. Defendant Morrisette reported Nazario's and Plaintiffs' trespass and commission of waste to the National Park.

27. Upon information and belief, in retaliation for Defendant's reporting of his trespass and waste onto National Park property, Nazario, acting either individually and/or at the direction of Plaintiffs, maliciously and intentionally trespassed onto the Land Acquired and poured chlorine, or some similar toxic chemical liquid, onto the base and roots of one of the mature mango trees planted and maintained by Morrissette.

28. These actions by Nazario gravely damaged and almost killed the mango tree planted and maintained by Morrissette. The injured mango tree has been very slow to respond to efforts to stimulate and flush its system with fresh water, and many branches of the tree were lost, together with all of its leaves, which turned brown and dropped off, leaving the tree bare.

29. With the consent and authorization of Plaintiffs, who own the residence that he occupies, Nazario owns and harbors two (2) large dogs of German Shepard mix, which Nazario allows to roam freely on Parcel No. 5 Estate Caneel Bay.

30. Nazario's dogs continuously bark from early in the morning to late in the evening disturbing the peace and quiet enjoyment of Defendant on his adjacent parcel of land, Parcel No. 6 Estate Caneel Bay.

31. Nazario's dogs charge at and terrorize people walking along the public roadway from Cruz Bay up the hill into Estate Caneel Bay and entering the National Park. Nazario makes no effort to control his dogs, and the Plaintiffs condone this activity.

32. On at least one occasion, Nazario's dogs have escaped their fenced enclosure and trespassed onto Parcel No. 6 Estate Caneel Bay, the land owned by Defendant Morrissette.

33. Nazario's dogs, by their loud and incessant barking and menacing actions, and trespass onto Defendant's land, all of which are well known to Nazario and to Plaintiffs, are both a public and private nuisance. .

34. Plaintiffs have instituted a practice of charging residents and visitors who are not staying at Caneel Bay Resort a parking fee to park in a lot on the premises of Caneel Bay Resort in order to access the beaches located on the land operated by Caneel Bay that is owned by the National Park. This fee is currently twenty dollars ($20.00) per day, increased from a prior fee of ten dollars ($10) per day.

35. The charging of the fee by the Plaintiffs has the effect of chilling the public's right to access to the beaches located within Caneel Bay Resort. Plaintiffs charge this fee despite, and in violation of, their CZM permit condition that they make their main beach and Honeymoon Beach, located within the Caneel Bay property, open and accessible to the public, and despite the fact that all of the land on which they operate Caneel Bay that is owned by the National Park is public land that is intended to be accessible to the public, including the beaches and hiking trails located thereon. The Plaintiffs' parking fee was instituted for the purpose, and has the effect, of chilling and circumventing the Plaintiffs'

CZM permit conditions, as well as to deny the public's right of access to National Park/public property.

36. Plaintiffs are requiring Morrissette to pay the parking fee if he wishes to access the beaches located within Caneel Bay Resort, and also have recently told Morrisette that he may not use the beaches, docks and roads of Caneel Bay, except in the manner that the general public is presently allowed, despite Morrisette's express, deeded right to use the roads, beaches and docks located at Caneel Bay Resort.

Morrisette's deeded rights to use the roads, docks and beaches of Caneel Bay is in perpetuity and runs with the land.

The burden of these covenants to allow access to Morrisette have passed to the National Park in the granting of the land from Caneel Bay Plantation, Inc. to Jackson Hole Preserve, Incorporated and/or its successors in interest to the National Park.

37. Not only Morrisette, but also all the guests that stay at Parcel 6 pursuant to the rezoning of August 1, 1999, are required and entitled to have unfettered access to Caneel Bay Resort.

COUNT 1 (Adverse Possession of the Land Acquired and Determination of Boundary Lines)

38. Morrisette repeats and realleges paragraphs 1 through 37 and incorporates them by reference as though fully set forth herein.

39. The Land Acquired has been openly, continuously, adversely, exclusively and notoriously possessed by Morrisette since 1992 - a period of approximately twenty-two (22) years - without challenge by Plaintiffs or anyone else.

40. Morrisette has planted and maintained trees, landscaping and shrubbery on the Land Acquired since 1992, up through and including the present day.

41. Morrisette requests that this Court made a determination and finding that the Land Acquired belongs to Morissette by virtue of adverse possession in accordance with 28 V.I.C. 371, and determine the boundary lines pursuant to 28 V.I.C. 372.

COUNT 2 (Waste against Nazario)

42. Morrisette repeats and realleges paragraphs 1 through 41 and incorporates them by reference as though fully set forth herein.

43. Nazario committed waste upon the land owned by the National Park and held for the benefit of the citizens of the United States and the U. S. Virgin Islands by cutting down or causing to be cut down trees in order to benefit his own view towards the water from Parcel 5.

44. 28 V.I.C. 334 provides that any person injured by waste on real property may maintain a cause of action.

45. Morrisette has been injured by the waste committed by Nazario. Any waste committed on adjacent land has the effect of devaluing the property owned by Morissette.

46. Morrisette requests that this Honorable Court award him treble damages against Nazario for the waste committed upon the land owned by the National Park.

COUNT 3 (Waste against Caneel Bay)

47. Morrisette repeats and realleges paragraphs 1 through 46 and incorporates them by reference as though fully set forth herein.

48. Nazario committed waste upon the land owned by the National Park and held for the benefit of the citizens of the United States and the U. S. Virgin Islands at the direction and control of or as an agent of Caneel Bay by cutting down or causing to be cut down trees in order to benefit his own and Plaintiffs' view towards the water.

49. 28 V.I.C. 334 provides that any person injured by waste on real property may maintain a cause of action.

50. Morrisette has been injured by the waste committed by Plaintiffs. Any waste committed on adjacent land has the effect of devaluing the property owned by Morissette.

51. Morrisette requests that this Honorable Court award him treble damages against Caneel Bay for the waste committed upon the land owned by the National Park.

COUNT 4 (Trespass Against Nazario with respect to National Park land)

52. Morrisette repeats and realleges paragraphs 1 through 51 and incorporates them by reference as though fully set forth herein.

53. Nazario committed trespass upon the land owned by the National Park and held for the benefit of the citizens of the United States and the U. S. Virgin Islands by cutting down or causing to be cut down trees in order to benefit his own view towards the water.

54. 28 V.I.C. 336 provides that when any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of the Virgin Islands or highways in front thereof, without lawful authority, in an action by such person or by the Government of the United States Virgin Islands against the person committing such trespasses, or any of them, if judgment is given for the plaintiff it shall be given for treble the amount of damages allowed or assessed therefor, as the case may be.

55. Morrisette has been injured by the trespass committed by Nazario in cutting down trees on adjacent National Park property. Any trespass by cutting down trees committed on adjacent land has the effect of devaluing the property owned by Morissette.

56. Morrisette requests that this Honorable Court award him treble damages against Nazario for the waste committed upon the land owned by the National Park.

57. Alternatively, Morrisette is entitled to single damages in accordance with 28 V.I.C. 336(b).

COUNT 5 (Trespass Against Plaintiffs with respect to National Park land)

58. Morrisette repeats and realleges paragraphs 1 through 57 and incorporates them by reference as though fully set forth herein.

59. Nazario committed trespass upon the land owned by the National Park and held for the benefit of the citizens of the United States and the U. S. Virgin Islands at the direction and control of or as an agent of Plaintiff by cutting down or causing to be cut down trees in order to benefit his own view towards the water.

60. 28 V.I.C. 336 provides that when any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of the Virgin Islands or highways in front thereof, without lawful authority, in an action by such person or by the Government of the United States Virgin Islands against the person committing such trespasses, or any of them, if judgment is given for the plaintiff it shall be given for treble the amount of damages allowed or assessed therefor, as the case may be.

61. Morrisette has been injured by the trespass committed by Plaintiffs in cutting down trees on National Park property. Any trespass by cutting down trees committed on adjacent land has the effect of devaluing the property owned by Morissette.

62. Morrisette requests that this Honorable Court award him treble damages against Plaintiffs for the waste committed upon the land owned by the National Park.

63. Alternatively, Morrisette is entitled to single damages in accordance with 28 V.I.C. 336(b).

COUNT 6 (Trespass against Nazario with respect to the Land Acquired)

64. Morrisette repeats and realleges paragraphs 1 through 63 and incorporates them by reference as though fully set forth herein.

65. Nazario committed trespass upon the land owned by Morrisette by pouring or causing to be poured chlorine or other caustic chemical on the mature mango tree planted, owned and maintained by Morrisette on the Land Acquired.

66. 28 V.I.C. 336 provides that when any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of the Virgin Islands or highways in front thereof, without lawful authority, in an action by such person or by the Government of the United States Virgin Islands against the person committing such trespasses, or any of them, if judgment is given for the plaintiff it shall be given for treble the amount of damages allowed or assessed therefor, as the case may be.

67. Morrisette has been injured by the trespass committed by Nazario by pouring or causing to be poured chlorine or other caustic chemical on the mango tree planted, owned and maintained by Morrisette on the Land Acquired. Any trespass by injuring a tree committed on the Land Acquired has the effect of devaluing the property owned by Morrisette. This is especially true in the case of a mature, fruit bearing mango tree.

68. Morrisette requests that this Honorable Court award him treble damages against Nazario for the waste committed by pouring or causing to be poured chlorine or other caustic chemical on the mature mango tree planted, owned and maintained by Morissette on the Land Acquired.

69. Alternatively, Morrissette is entitled to single damages in accordance with 28 V.I.C. 336(b).

COUNT 7 (Trespass against Plaintiffs with respect to the Land Acquired)

70. Morrissette repeats and realleges paragraphs 1 through 69 and incorporates them by reference as though fully set forth herein.

71. Nazario committed trespass upon the land owned by Morrisette at the direction and control of or as an agent of Plaintiffs by pouring or causing to be poured chlorine or other caustic chemical on the mango tree planted, owned and maintained by Morrisette on the Land Acquired.

72. 28 V.I.C. 336 provides that when any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of the Virgin Islands or highways in front thereof, without lawful authority, in an action by such person or by the Government of the United States Virgin Islands against the person committing such trespasses, or any of them, if judgment is given for the plaintiff it shall be given for treble the amount of damages allowed or assessed therefor, as the case may be.

73. Morrisette has been injured by the trespass committed by Plaintiffs by pouring or causing to be poured chlorine or other caustic chemical on the mango tree planted, owned and

maintained by Morissette on the Land Acquired. Any trespass by injuring a tree committed on the Land Acquired has the effect of devaluing the property owned by Morissette. This is especially true in the case of a mature, fruit bearing mango tree.

74. Morrisette requests that this Honorable Court award him treble damages against Caneel Bay for the waste committed by pouring or causing to be poured chlorine or other caustic chemical on the mango tree planted, owned and maintained by Morissette on the Land Acquired.

75. Alternatively, Morrisette is entitled to single damages in accordance with 28 V.I.C. 336(b).

COUNT 8 (Nuisance against Nazario)

76. Morrisette repeats and realleges paragraphs 1 through 75 and incorporates them by reference as though fully set forth herein.

77. 28 V.I.C. 331 allows a person whose property is affected by a private nuisance, or whose personal enjoyment thereof is in like manner thereby affected, may maintain an action for damages.

78. The actions of Nazario's dogs as outlined above constitute a private nuisance of both Morrisette and the public as a whole and are further in violations of the covenants contained in the Deed.

79. Nazario is aware of the behavior of his dogs in continuously barking and charging and terrorizing any persons who walk by any land adjacent to Parcel No. 5. Nazario intentionally, negligently or recklessly allows his dogs to behave in this manner.

80. Morrisette requests that this Honorable Court award him damages for the nuisance.

81. Morrisette will further request at the time that this Honorable Court enter judgment in his favor that pursuant to 28 V.I.C. 332 a warrant be issued to direct the marshal to abate the nuisance at the expense of Nazario.

COUNT 9 (Nuisance against Caneel Bay)

82. Morrisette repeats and realleges paragraphs 1 through 81 and incorporates them by reference as though fully set forth herein.

83. 28 V.I.C. 331 allows a person whose property is affected by a private nuisance, or whose personal enjoyment thereof is in like manner thereby affected, may maintain an action for damages.

84. The actions of Nazario's dogs as outlined above constitute a private nuisance of both Morrisette and the public as a whole and are further in violations of the covenants contained in the Deed.

85. Nazario owns and harbors two (2) large dogs of German Shepard mix with the consent and authorization of Caneel Bay.

86. Plaintiffs are aware of the behavior of Nazario's dogs in continuously barking and charging and terrorizing any persons who walk by any land adjacent to Parcel No. 5. Plaintiffs intentionally, negligently or recklessly allows Nazario's dogs to behave in this manner.

87. Morrisette requests that this Honorable Court award him damages for the nuisance.

88. Morrisette will further request at the time that this Honorable Court enter judgment in his favor that pursuant to 28 V.I.C. 332 a warrant be issued to direct the marshal to abate the nuisance at the expense of Caneel Bay.

COUNT 10 (Breach of Covenants against the United States of America and/or National Park and request to Quiet Title)

89. Morrisette repeats and realleges paragraphs 1 through 88 and incorporates them by reference as though fully set forth herein.

90. Parcel 6, the Land owned by Morrisette, has deeded rights that run with the land which include but are not limited to the right to pass, repass and use the docks, anchorages and beaches which the United States of America and/or the National Park owns and on which Plaintiffs operate a resort, known as "Caneel Bay Resort.".

91. The land owned by the United States of America and/or the National Park on which Plainitffs operate a resort is subject to the uses as set forth above.

92. The United States of America and/or the National Park has breached these covenants by allowing, Plaintiffs, to restrict access to Morrisette of the roads, docks, anchorages and beaches by:

    a. Charging a parking fee to Morrisette

    b. Restricting which roads contained within Caneel Bay Resort Morrisette may access

    c. Restricting Morrisette's access to docks, anchorages and beaches which exist for the benefit of Caneel Bay Resort by only allowing Morissette access to the same which the general public have access.

93. These actions by the United States of American and/or the National Park are in direct violation of the title covenants of record for the benefit of Morrisette.

94. By virtue of the title covenants Morrisette has a title interest in the land owned by the United States of America and/or the National Park on which Plaintiffs operate a resort.

95. Morrisette requests that this Honorable Court grant declaratory relief, pursuant to *5 V.I.C. 1262*, enforcing the deed covenants against the National Park Quieting Title by declaring

the deed covenants valid and enforceable and ordering the United States of America and/or the National Park to instruct Plaintiffs, to properly comply with the deed covenants by giving Morrisette the full use of the roads, beaches, and docks within Caneel Bay Resort.

COUNT 11 (Breach of Covenants against the National Park and request to Quiet Title)

96. Morrisette repeats and realleges paragraphs 1 through 95 and incorporates them by reference as though fully set forth herein.

97. Parcel 6, the Land owned by Morrisette, has deeded rights that run with the land which include but are not limited to the right to pass and repass over the land on which Plaintiff leases and occupies, and the right to use the docks, anchorages and beaches which exist on the land on which Plaintiffs operate a resort that is owned by the United States of America and/or the National Park, known as Caneel Bay Resort. These covenented rights of use extend to the rental guests who reside with Morrisette on the Land .

98. The land owned by the United States of America and/or the National Park on which Plaintiffs operate a resort is subject to the uses as set forth above.

99. The United States of America and/or the National Park has breached these covenants by allowing, Plaintiffs, to restrict access to Morrisette's guests of the roads, docks, anchorages and beaches by:

    a. Charging a parking fee to Morrisette's guests

    b. Restricting which roads contained within Caneel Bay Resort Morrisette's guests may access

c. Restricting Morrisette's guests' access to docks, anchorages and beaches which exist for the benefit of Caneel Bay Resort by allowing Morissette's guests to only access areas of the Resort to which the general public is allowed access.

100. These actions by the United States of America and/or the National Park are in direct violation of the covenants of record for the benefit of Morrisette's guests and the Land.

101. Morrisette requests that this Honorable Court grant declaratory relief, pursuant to *5 V.I.C. 1262*, enforcing the deed covenants against the United States of America and/or the National Park, Quieting Title by declaring the deed covenants valid and enforceable and ordering the National Park to instruct Plaintiffs, to properly comply with the deed covenants with respect to Morissette's guests.

WHEREFORE, Morrisette requests damages as set forth in this pleading and as otherwise available in law and in equity.

Respectfully Submitted,

Michael L. Sheesley, P.C.

Dated: August 31, 2015

s/Michael L. Sheesley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2015, an exact copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send a notification of the filing (NEF) to the parties in the above captioned action:

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